資　料

昭和25年および昭和26年商法改正関係資料(2)

——ＧＨＱ／ＳＣＡＰ文書から——

中　東　正　文

（２）商法修正案の概要（1949年（昭和24年）10月29日法制審議会商法部会決定）

本文書は、1949年（昭和24年）８月13日に諮問された法律案要綱[3]に対する答申案として、10月29日に法制審議会商法部会で承認された要綱の修正案である[4]。原資料は、国会図書館憲政資料室所蔵の GHQ／SCAP Records ESS (C) 09670 による（各行の切れ目は原文のままとしたが、綴りの誤りなどは適宜修正を施した）。

この文書については、高柳賢三部会長の添状があり、また、簡単な注釈も作成されている（後掲資料(3)(4)）。

（３）　拙稿・前掲注(2)の第４章第１節および第２節を参照。

（４）　拙稿「昭和25年商法改正——GHQ文書から見た成立経緯の考察(3)」中京法学31巻２号（1996年）の第４章第４節を参照。法制審議会商法部会により修正がなされた部分については、翻訳したものを前記論文に掲げた（同論文の第４章注(19)参照）。おそくは日本語版も存在するのであろうが、筆者が入手し得たのは英文のみであったし、ＧＨＱ側との協議においては英語版が基礎とされているので、多少の不便はあろうが原文のまま収録した。

Outline of the Proposed Amendments to the Commercial Code

as adopted by the Section on Commercial Code on October 29th 1949

1. To provide that the Articles of Incorporation must state the total number of the stocks authorized to be issued by a company, whether they are to be par value stocks or non par value stocks and their respective numbers, the total number of the stocks which are to be issued at the time of incorporation and the minimun price at which each of non par value stocks is to be issued.

2. To provide that the total number of the stocks to be issued at the time of incorporation shall not be less than one-fourth of the total number of the stocks authorized.

To provide that a company shall not increase the total number of its stocks so as to exceed a quadruple of the total number of the stocks already issued.

3. To provide that in respect to the stocks to be issued by a company at the time of incorporation, whether they are to be par value stocks or non par value stocks, their descriptions, numbers, their issue prices, and all other matters relating to issuance, and particulars as to the paid in surplus shall be determined by the unanimous consent of the promoters, unless otherwise provided in the Articles.

4. To provide that all resolutions of an inaugural general meeting shall be adopted by a two-thirds majority of the votes of the subscribers present at the meeting, which majority must also constitute a majority of all the stocks subscribed.

5. To provide that the liability of promoters or of directors relating to the incorporation of the company cannot be released

by a special resolution (as provided by Article 343).

6. To abolish actions against promoters to be brought upon demand by the minority stockholders and to provide that any of the stockholders is entitled to institute an action on behalf of the company against promoters to enforce their liability relative to the incorporation of the company.

7. To provide that the transfer of stocks cannot be restricted nor an indorsement of the stock certificate prohibited by the Articles.

8. To provide that in order to assign non-bearer stocks, an indorsement of the stock certificates, or the delivery of the stock certificates coupled with a document of evidencing the transfer are required.

8-2. To delete Art. 229, para. 2 of the Commercial Code.

8-3. To provide that redemption stocks capable of being amortized out of the profits may be issued.

9. To provide that in respect to convertible stocks, the conversion shall become effective on the day such conversion is demanded, but that in respect to the distribution of profits or interest special provision may be made in the Articles to the effect that a conversion is deemed to have been effected at the beginning or the end of the financial year.

9-2. To provide that the period to be allowed for suspending the entry of a change of stockholders in the register shall not exceed sixty days and that for the purpose of ascertaining the stockholders entitled to exercise their rights a standard day system may also be adopted.

9-3. To provide that all resolutions of a general meeting shall be confined to matters so required by laws or ordinances or by the

Articles.

10. To reduce the number of the minority stockholders entitled to demand the convening of an extraordinary general meeting and to provide that the expenses for the convening of such meeting shall be defrayed by the company.

11. To provide that for adopting a resolution of the general meeting, the stockholders representing more than one-half of all the issued stocks shall be present, unless otherwise provided in the Articles.

12. To provide that a proxy is to be conferred for each general meeting.

13. To provide that a voting right cannot be restricted by the Articles.

14. To provide that non-voting stocks shall not be recognized except in the case of preferred stocks, and that even in such case a voting right may be exercised during the period in which they do not receive any preferred treatment.

15. To provide that in the case of an assignment of the business of a company or in a similar case, any stockholder who has voted against such measure may demand the company to purchase his stocks at a fair value.

16. To provide that a director shall not even by the Articles be required to be a stockholder.

17. To provide that in respect to any resolution for the appointment of a director, the number of the stocks to be represented by stockholders to be present at the general meeting may not be decreased even by the Articles to less than one-third of all the stocks issued.

18. To Be Deleted.

19. To provide that resolution for the removal of a director shall be made by a special resolution (as provided by Article 343) and that the minority stockholders may, in cases any director has committed a dishonest act or any grave contravention or any law or ordinance or the Articles, bring an action for removal.

19-2. To adopt the board system and to provide that the administration of the affairs shall be determined by the board of directors.

19-3. To provide that in case the board of directors has not fixed any director who is to convene meetings of the board they may be convened by any of the directors at one week's notice.

19-4. To provide that unless otherwise provided in the Articles all resolutions of the board of directors shall be adopted by a majority of the votes of the directors.

To provide that a quorum for a meeting of the board of directors may be fixed by the Articles, and that it shall not be less than one-half of the directors.

19-5. To provide that the minutes shall be taken of all the proceedings of the meetings of the board of directors, and that the same shall be kept at the principal office and at each branch office.

19-6. To provide that the company shall have one or more directors to represent it and that he or they shall be nominated by a resolution of the board of directors.

19-7. To abolish the *kansayaku* system and to make provision for an organ to examine the accounts of the company.

20. To amend Article 294 of the Commercial Code to the effect that also in cases any reason exists for suspecting serious mismanagement

on the part of the directors, any of the shareholders is entitled to apply to the Court for the appointment of an inspector and that the inspector shall report the results of his inspection to such shareholder also.

21. To provide for the liability of the directors in respect to illegal dividends, loans to directors, important entries in a statement of accounts or public notice or registration, dealings with the company on their own behalf, and their business competition with the company.

22. To privide that the liability of directors in damages to the company shall not be released by a special resolution (provided by Article 343).

23. To abolish actions against the directors to be brought upon demand by the minority stockholders and to provide that any of the stockholders is entitled to institute an action on behalf of the company against the directors to enforce their liability.

24. To provide that if the directors do an act which is not within the scope of the objects of the company or contravening any law or ordinance or the Articles and if there is an apprehension of causing thereby irreparable damage to the company, any of the stockholders is entitled to demand of the directors that such act be stopped.

25. To provide that in the case of issuing stocks after incorporation, whether they are to be par value stocks or non par value stocks, their descriptions, numbers, the prices at which they are issued, and all other matters relating to issuance, and particulars as to the paid in surplus are to be determined by the board of directors unless otherwise provided in the Articles.

26. To Be Deleted.

27. To provide that a pre-emptive right may be granted to stockholders or third persons by the Articles or by a special resolution (as provided by Article 343).

28. To make provision for an inspection system, similar to the inspection required at the formation of a company where the promoters take all the stocks, in respect to any contribution in kind beyond specified limits effected after incorporation.

29. To provide that persons who have subscribed for stocks and have made payment thereon in money or in kind shall become stockholders as from the date on which the payment is to be made and that persons who have subscribed for stocks but have failed to make payment thereon by the time fixed for payment shall *ipso facto* forfeit their rights.

30. To provide that if the directors issue stocks either in contravention of any law or ordinance or of the Articles or in a grossly unfair manner, and if there is any fear of stockholders suffering pecuniary disadvantage thereby, the stockholders concerned may demand the company to stop such issuance.

31. To provide that any person who in collusion with any director has subscribed for stocks at a grossly unfair (*low*) price shall be liable to refund to the company an amount equivalent to the difference between a fair price and such unfair price.

31-2. To provide that upon the expiration of six months after the making of the registration of alteration due to the issuance of new stocks or after having exercised any right of a stockholder, no person who has subscribed for stocks issued after incorporation may assert the nullity of his subscription by reason of mistake or noncompliance with the requirements concerning the application form, nor may rescind his subscription alleging fraud or coercion.

31-3. To provide that in case there are stocks which have not

been subscribed for after the making of the registration of alteration due to the issuance of new stocks, the directors shall be deemed to have jointly subscribed for such stocks.

31-4. To make provision for actions for nullifying the issuance of new stocks and to provide that when a judgment declaring its nullity has become non-appealable, such stocks shall lose its validity for the future.

32. To provide that the capital which is to constitute the basis of the accounts of a company shall be equal to the aggregate amount of the face value of all the issued par value stocks, the aggregate amount of the issue prices of all the non par value stocks issued or their grand total, but that in case the paid in surplus has been determined, the same shall be deducted therefrom and in case the amount to be transferred from the reserve to the capital has been determined, the same shall be added thereto.

32-2. To provide that the paid in surplus shall not exceed one-fourth of the issue price of the non par value stocks and that as respects the issuance thereof at the time of incorporation the same shall not comprise any sum other than the portion which is in excess of the minimun issue price.

33. To provide that the amount of expenses necessary for the issuance of stocks may be entered on the assets side of the balance sheet and that they may be amortized in equal amount at each time within a fixed period.

34. To provide that the company shall set aside at least one-twentieth of its profits as the earned surplus at each period for the settlement of accounts, until such surplus shall have reached one-fourth of its capital.

35. To provide that the amount exceeding the par value, the paid in surplus, the appreciation in value due to revaluation, the sur-

plus arising by reason of reduction of the capital and the surplus arising by the amalgamation of companies shall be set aside as the capital surplus.

36. To provide that deficiencies in the capital shall in the first place be replenished out of the earned surplus, that, if such deficiencies shall subject then out of the capital surplus, and that none of the surpluses shall be employed for any other purpose.

37. To provide that the company may by a special resolution (as provided by Article 343) distribute profits in whole or in part in the shape of stocks newly issued.

37-2. To provide that the whole or a part of the legal reserve may be transferred to the capital by a resolution of the board of directors and that in such case the company may issue stocks to stockholders to that extent.

37-3. To provide that a stock may be split up by a resolution of the board of directors.

37-4. To provide that subscriptions for debentures shall be effected by a resolution of the board of directors.

37-5. To provide that the total amount of debentures shall not exceed that aggregate amount of capital and legal reserve.

38. To provide that in respect to convertible debentures, the conditions of conversion, particulars as to the stocks to be issued by reason of conversion, etc. shall be provided for by the Articles or by a special resolution (as provided by Article 343).

39. To provide that in respect to convertible debentures, the conversion shall become effective on the day such conversion is demanded, but that in respect to the distribution of profits or interest, the Articles may provide that such conversion is deemed to have

been effected at the beginning or the end of the financial year.

40. To provide that a special resolution (as provided by Article 343) and a resolution of a general meeting of stockholders of certain descriptions shall be adopted by a two-thirds majority of the votes of such stockholders present, which majority shall also constitute a majority of all the stocks issued, and that in case a majority of all the shares issued have not be obtained, a provisional resolution may be adopted by a two-thirds majority of the votes of the stockholders present.

41. To delete the provisions of the Commercial Code relative to the increase of capital.

42. To provide that the reduction of capital can only be made by a special resolution (as provided by Article 343), and its procedure is to be the same as the procedure for the reduction of capital heretofore in force.

43. To Be Deleted.

44. To provide that in case no way is to be found for ameliorating the state of affairs of the company which make it imprudent to continue its business, stockholders representing one-tenth or more of all the stocks issued may apply to the Court for dissolution of the company.

45. To provide that in the case of the merger or consolidation, any stockholder making an objection to such measure is entitled to demand the company to purchase his stocks at a fair value.

46. To provide that a written agreement for merger shall state the total number of stocks issued by the company continuing to exist, whether they are par value stocks or non par value stocks and their respective numbers, and the amount of the capital and reserve to be increased upon merger, as well as the total number of stocks

to be issued upon merger whether they are par value stocks or non-par value stocks and their respective mumbers and to provide that a written agreement for consolidation shall state the total number of stocks issued by the company to be formed, whether they are par value stocks or non par value stocks and their respective numbers, and the amounts of the capital and reserve, as well as the total number of stocks to be issued upon consolidation, whether they are to be par value stocks or non par value stocks and their respective numbers.

47. To reduce the number of stockholders required for applying for removal of the liquidator.

48. To Be Deleted.

48-2. To abolish *kabushiki-goshi-kaisha.*

49. To provide that in respect of the application for an order of the dissolution of a company, the Attorney-General shall be the person so entitled and the causes justifying such application shall be clearly stated.

50. To provide that in respect to the actions provided in Book II (*Kaisha*) the deposit of security is not to be required, that a claim shall not be dismissed at the discretion of the Court except in clearly stated cases, as where the recognition of the claim by the Court would prejudice the interests of the company or third persons, and that the period within which actions for the cancellation of a resolution of a general meeting may be brought shall be extended to three months.

51. To provide that if a foreign company intends continuously to engage in commercial transactions in Japan, it shall determine its representative and its place of business and register the same.

52. To provide that if a foreign company has continuously engaged in commercial transactions in Japan without registering its place of

business, any person who has engaged in commercial transactions on behalf of the company shall be jointly and severally liable with the company.

53. To Be Deleted.

54. The provisions of Book II (*Kaisha*) shall be so amended and the penal provisions so re-adjusted as may be necessitated by the amendments mentiond above.

(3) 1949年(昭和24年)11月18日の高柳賢三法制審議会商法部会長の書状

1949年(昭和24年)11月18日に、法制審議会商法部会の高柳賢三部会長は、商法部会が10月29日に採択した要綱の修正案(資料(2))を持参し、GHQ経済科学局のアイゼンスタインを訪問した(5)。この書状は、その際に高柳部会長が提示したものであると思われるが、当局との力関係やそれを踏まえての審議の様子を窺わせるものとしても、興味深いであろう。原資料は、国会図書館憲政資料室所蔵の GHQ／SCAP Records ESS (C) 09670による(各行の切れ目は原文のままとしたが、綴りの誤りなどは適宜修正を施した——判読できなかった箇所は＊＊で示した)。

1. Mr. Eisenstein:

I am here today as Chairman of the Committee on Commercial Code to make a report to you, Mr. Eisenstein, as representing Mr. Welsh, head of this Section, on the Outline adopted by my Committee on October 29. This Outline will shortly be reported to the general session of the Legislative Council. In case it is adopted by the general session, it will be made public. I thought it proper to report it to your Section before it is referred to the ge-

(5) 拙稿・前掲注(4)第4章第4節一参照。

neral session not to say before its publication.

2. The task of my Committee was to study an Outline of the Proposed Amendments to the Commercial Code comprising 54 heads as presented by the Attorney's Office and to make a report thereon to the general session of the Legislative Council. The Committee held a meeting continuing for two consecutive days i.e. on September 13 and 14 and gerenal discussion was conducted under my chairmanship after a full explanation of the Outline by Mr. Okazaki and other members of the Attorney's Office. Then the Outline was referred for detailed **ruiting of which Mr. Yokota, Member of the Fair Trade Commission, ****ed as chairman. Mr. Yokota's sub-committee sat 10 times and drew up a new draft Outline, incorporating proposed alterations of the original Outline. It was reported back to the plenary session of my Committee on October 28 and the new draft Outline was adopted on the following day with a few changes. And it is the Outline as adopted at the session of my Committee which I now present to you.

3. I understand the original Outline was based on the joint endeavors of the legal members of your Section and members of the Attorney's Office to amend the Japanese Corporation Law so as to make the organization and functioning of Japanese business corporations more democratic. May I congratulate you that your earnest endeavors along that line have borne fruits in the new Outline adopted by my Committee. If certain alterations of the original Outline were made by my Committee as a result of due deliberation, they relate rather to matters of technique than to matters of general policy.

4. I may report that Mr. Okazaki and other able members of the Attorney's Office not only elucidated in detail each head of the original Outline but stoutly fought in its defense. The members of my Committee including the present Supreme Court and other Justices, practising lawyers of long standing well versed in corporation practice, an expert in corporation finance and accounting, eminent professors specialized in commercial law, and some prominent public-spirited businessmen all of whom would command high respect among my countrymen. They freely expressed their

expert comments on the original Outline, but always bearing in mind the general policy of democratization underlying the provisions of the original Outline. It was due to their unanimity in the basic attitude that the major part of the original Outline was approved by my Committee. I wish that the Outline as adopted by my Committee will meet with your approval.

5. I have prepared for your convenience short notes on the views expressed at my Committee elucidating these points in which my Committee recommended alterations of the original Outline. I shall be happy if these notes prove of some service to you in making comparison of the Outline adopted by my Committee with the original Outline. It will be type-written and delivered to you by tomorrow or Monday. If further explanations are required, I shall be delighted to come again, and Mr. Yokota, who knows the details much better than I do may also come to assist me.

6. I earnestly hope that the Outline will be approved by your Section as early as possible, so that the Attorney General's Office may prepare a draft bill in time to be presented to the next Diet, and that your high endeavours will materialize in the shape of a new Corporation Act befitting Democratic Japan.

Kenzo Takayanagi,
Chariman of the
Committee on Commercial Code

November 18, 1949.

（4）商法修正案に関する注釈

この文書は、1949年（昭和24年）10月29日の商法修正案（資料(2)）に対する注釈である。同年11月18日に高柳賢三法制審議会商法部会長がアイゼンスタインを訪問した際に、後日届けることを申し伝えたものである（資料(3)の項目5を参照(6)）。修正案の趣旨を把握する上で有益であろう。原資料は、国会図書館憲政資料室所蔵の GHQ／SCAP Records ESS (C) 09670 である（各行の切れ目は原文のままとしたが、綴りの誤りなどは適宜修正した——判読できなかった箇所は＊＊で示した）。

Some Notes on the Outline adopted by the Commercial Law Section of the Legislative Council

By Kenzo Takayanagi, Chairman.

1. The "minimun amount of the capital" in the original Outline has been changed to the "minimum price at which each of the non par value stocks is to be issued".

If the minimum amount of the capital is required to be stated in the Articles, the Committee considered, the nullity of incorporation would follow, in case the amount of payment in money or in property did not reach the minimum amount of the capital after registration of the incorporation has been completed. To avoid such nullity, it might become necessary e.g. to provide for the absolute liability of the directors, without any right of reimbursement, to replenish the deficiency, or else to allow the issuance of stocks over and above the total number of stocks to be issued at the time of incorporation as stated in the Articles. The adoption of such measures was regarded by the Committee as improper.

On the other hand, to require a statement of the "minimum price at which each of the non par value stocks is to be issued" in the Articles, with the view of attaining the same object of

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（6） 拙稿・前掲注(4)第4章第4節一参照。

clarifying the economic foundations of the company at the time of incorporation, would have the effect of making the non par system less flexible in operation. The Committee, however, was of the opinion that such restrictions might well be imposed, inasmuch as the non par system is a new experiment in this country. Hence the change.

2. The second paragraph was added by the Committee, because unless such restrictions ******* to be imposed after incorporation a company might increase to any extent the total number of the authorized stocks by altering as Articles, ** is giving the directors too wide discretion as the issuance of stocks, which the Committee regarded as undesirable so long as the public were not accustomed to the non par system.

8-2. Article 229, para. 2 was deleted by the Committee in conformity with the policy of giving preference to the security of stock transactions over the ownership of stockholders.

8-3. This measure was deemed proper for facilitating a company to raise capital.

9. The basic principle underlying the provision of the original Outline was regarded as perfectly logical and sound and has been accepted by the Committee. But from practical considerations it was deemed necessary to permit special provision to be made by the Articles regarding the distribution of profits and interest.

9-2. It was deemed proper by the Committee to sanction the prevailing practice of "suspension" by express code provisions but by limiting the period to 60 days. It was also deemed desirable to allow the "standard day system" to be adopted by a company in place of the "suspension system" now generally in use.

9-3. This provision restricting the powers of a general meeting is a result of the policy of the proposed amendments to invest the

board of directors with wide powers regarding the administration of the company's affairs.

12. The original Outline sets a six months limit to the period during which a proxy may validly be given. Although the Committee agreed to the policy of preventing any attempt to control the company by ******ing proxies extending over a long period, it was afraid that the express sanction of 6 months period by the Code might tend to generate a general practice of six months proxy, which was deemed by the Committee to be undesirable. The Committee was of the opinion that Article 239, para. 3 of the present Code was properly to be interpreted that a proxy was for a specified general meeting, and that this interpretation might be expressly provided for forwarding the same policy.

18. The Committee deliberated on the cumulative voting system proposed by the original Outline in all its bearings, both theoretical and practical. Although the Committee was of the opinion that the cumulative voting system had much theoretical justification as it checked the arbitrary or dubious actions of the directors by having vigilant directors representing the minority stockholders sitting on the board, its practical operations in this country would probably be such, that it would fail to attain the objects envisaged. It was the sense of the Committee, that it would throw the administration of business corporations into confusion and open the way to many serious evils without the expected benefits being realized. After due balancing of the benefits and evils of the system as applied to Japanese business corporations in the near future, the Committee finally came to the conclusion that it was premature to adopt it and that 18 should be deleted.

19. The Committee considered that the provision of the original Outline relating to the dismissal of a director would in effect make the procedure more stringent than that by special resolution, which latter was deemed by it to be sufficient. The Committee also deemed it proper to give a right of action of removal to the minority

stockholders, in case a director had been guilty of dishonest act or any serious contravention of laws or ordinances or of the Articles.

19-2 to 19-6. In view of the wide powers to be vested in the directors and the heavy responsibility they are to assume under the proposed amendments, the Committee deemed it proper to adopt the "board of directors" system and to make provision for the convening of and the quorum for a meeting of the board, the resolutions, the making of the minutes and free access to such minutes, and also to provide for the representative directors to carry out resolutions made by the board.

19-7. The Committee weighed the pros and cons of the *kansayaku* system now in force. It came to conclude that it was high time to abolish it and to replace the same by a more efficient organ for auditing the accounts.

20. The Committee paid scrupulous care and attention to the question of a stockholder's right of the access to the books of the company. The Committee favoured the basic policy of strengthening a stockholder's right evident in many parts of the original Outline and generally agreed also to the concrete measures for realizing that policy. The Committee was, however, strongly opposed to the adoption of this particular technique to forward the same policy. It was the sense of the Committee that as applied to Japan and especially during the post-war period it would open the way to practical evils perhaps greater than the benefits which the introduction of the traditional American doctrine might confer in some instance in the way of checking mismanagement of the company. The Committee also was of the opinion that this right would not in view of the psychology and ability of most stockholders serve as an efficient weapon in the hands of ordinary *bona fide* shareholders to protect their interests against mismanagement. The Committee, therefore, had deleted 20 and substituted it by another technique more familiar and in much practical use in this country, viz. the right to demand the appointment of inspectors by the court. Thus

the Committee decided that Article 294 should be so amended that one of the stockholders was to be entitled to demand, and that the demand might be made, if any doubt exists not only of a dishonest act, etc. as provided in said Article but also of "serious mismanagement", and that the report on the results of the investigation of the books and the affairs of the company by the inspectors should be made available to be stockholder who demanded the appointment.

26. The Committee has debated 26, on the ground (1) that in its opinion, there was no sufficient reason to abolish the present principle of freedom of allotment (i.e. the directors are to be to allot stocks in such manner as may be most beneficial to the company) and to replace it by that of uniformity, (2) that the uniformity principle, if adopted, would give rise to many legal doubts, e.g. whether it was directory or mandatory, and if the latter whether the issuance contraventing it was null and void or such issuance was only subject to avoidance by the subscribers, and (3) that if the evils of favoritism by the directors are what the uniformity principle was designed to guard against, the matter might be dealt with under 30 of the Outline.

27. The Committee deemed it more proper from considerations of legitimate financing to provide that a pre-emptive right might be granted to stockholders or third persons by the Articles or by a special resolution, with the understanding that unfair treatment accorded the existing stockholders, e.g. by affecting their proportionate voting control could be dealt with by the Court under 30.

30. In view of the ambiguity as regards relations between the provisions of 24 and 30, the Committee amended 30 so as to cover only cases where the individual interests of a stockholder were ***** jeopardized by an illegal or unfair issuance of new stocks.

31. The extent of liability of the stockholders envisaged by the provisions of the original Outline might, in the Committee's opinion, unduly impede the free circulation of stocks and cause unexpected

damage to stockholders. The liability was, therefore, limited by the Committee as in the amended Outline.

31-2 to 31-3. The doctrines of Arts. 191 and 193 have been adopted by the Committee with respect to the issuance of stocks after incorporation. However, the provisions of Art. 192, that directors are liable to take stocks which have not been subscribed for have so far given rise to much abuse and, 31-3 provides, therefore, that such stocks are deemed to have been taken by directors jointly. The Committee expressed its desire that Article 192 should also be amended in that sense.

31-4. The Committee deemed it proper to provide for an action demanding nullity and to treat the issuance of stocks, even if defective, as valid until they were adjudged to be null and void.

32-2. The Committee considered it proper expressly to provide that the paid in surplus shall not exceed one-fourth of the price of the non par value stock, instead of leaving the matter to sound business judgment. The restriction in the latter part is, of course, designed to clarify the economic foundations of the company at the time of its incorporation.

34. The proviso in the original Outline has been deleted from considerations of sound corporation finance.

35. The Committee deemed it proper to require "the appreciation in value due to revaluation", "the surplus arising by reason of reduction of capital" and "the surplus arising by the amalgamation of companies" also to be set aside by way of the capital surplus.

37-2 to 37-4. These rules have been deemed necessary under a regime of authorized capital and of non par value stocks.

37-5. The Committee considered that the legal reserve should be treated the same as the capital in regard to restrictions on the

total amount of debentures.

40. The Committee deemed it necessary to provide for "provisional resolutions" in respect to special resolutions and those of general meetings of stockholders of certain descriptions.

41 and 48. The Committee deemed it proper to delete 41 and 48, inasmuch as matters relating to reorganization and special liquidation would be dealt with by another Section (Bankruptcy) of the Legislative Council.

48-2. The Committee was of the opinion that *kabushiki goshi kaisha,* a histonic relic now serving no useful purpose, might be abolished.

49. The Committee deemed it proper to make the Attorney General the party entitled to make an application to dissolve a company, since in contrast to 44 which was chiefly designed to protect the individual interests of stockholders, 49 was based mainly on considerations of public interest. It was deemed proper, however, to provide that any person interested might request the Attorney General to apply for dissolution.

50. The Committee agreed to the abolition of the deposit for security and of the untravelled discretion of the Court.

As to the limitation of action, however, the Committee was of the opinion that differences in the periods of limitation as provided in the Code was based on the nature and character peculiar to each of the actions concerned and that it would not be proper to make them mechanically uniform.

The Committee, however, considered that actions for cancellation of a resolution of a general meeting might well be extended to three months for the more ample protection of stockholders.

53. This has been deleted by the Committee for the simple reason that this was a proper matter to be provided for elsewhere than in the Commercial Code.